


## BOOKS AND PERIODICALS

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### LIVES WORTH THE TAKING.

Judging from the present output of the publishing trade the Spirit of the Age has grown tired of her vain quest of the secret of life in the laboratory, and has come out by the same door wherein she went to view the passing show of humanity and study the purpose of life as revealed by the notabilities in the procession. Biology is giving place to Biography in the world of books.

Biography is not history, nor is history the essence of innumerable biographies as Carlyle, speaking unadvisedly, says it is. More inept still is Emerson's dilution of Carlyle's dictum: "There is properly no History, only Biography." History deals with the life of mankind, biography with that of individuals; and the former is not the sum or synthesis of what individuals have done or suffered in this world but it is something more and something else. As John Buchan puts it in one of his recent essays: "Memoirs and biographies are side-shows in the historical theatre. The historian's task differs from the biographer's, for while the latter produces a miniature or at best a kit-kat, the former works with a large canvas and a multitude of figures. In history quantities as well as qualities are demanded . . . It must have science in its structure and philosophy in its spirit, and art in its presentation." Biography appeals to the merely curious man; history to the scholar. So far as the obligation to tell the truth, the whole truth, and nothing but the truth without fear or favour is concerned the biographer must respond to it in the same measure as the historian; but we cannot blame the biographer for any lack of science or philosophy in his work. Science is not its own reward nor is philosophy divine when juxtaposed in the sphere of works of supererogation. If, however, the biographer is a master of the art of literary expression then his readers will rise up and call him blessed.

\* \* These observations were evoked by a reading of Mr. Oswald Garrison Villard's recently published biographical sketches of certain

prominent Americans under the title of "Prophets True and False."<sup>1</sup> The publisher's jacket describes it as "a book of timely portraits, as daring and lively as they are pertinent to the Presidential year." In this instance the publisher does not overstate the quality of the book.

Mr. Villard's title naturally recalls Mr. A. G. Gardiner's "Prophets, Priests and Kings," and it is a compliment to Mr. Villard and no disparagement to Mr. Gardiner to say that the two books are fairly comparable in their measure of service to the reader. It must be admitted that the American biographer does not possess that affluent skill in vivid literary portraiture which is Mr. Gardiner's endowment, but what his work lacks in the command of the *mot rayonnant*, or that subtilty of phrase which flashes instant understanding of characteristics sought to be revealed, is to a large extent compensated by obvious honesty of purpose and intimate knowledge of the careers of the people whom he brings upon his stage. He has courage, too, and does not whisper his opinions. Like Mr. Gardiner, the author of the book in hand, is a journalist by profession. Journalism is the college from which biographers are graduated in our day, and it appears that this is not the author's first entry upon the field.

There are no less than twenty-seven persons of distinction whose doings and misdoings are discussed by Mr. Villard; and it is quite impossible for us to do more than briefly refer to what he has to say about a few of them. If we are correctly informed he has chosen ten of his subjects from the ranks of those who are or have been active members of the legal profession.

His book being a timely one it is fitting that we are first introduced to the redoubtable "Al" Smith and the unmagnetic but pragmatic Herbert C. Hoover. Mr. Villard's practice is to attach a descriptive tag to his personages and the one he devises for Mr. Hoover — "Supersalesman" — does not strike us as inappropriate. Business, in the opinion of his biographer, is more of a religion to Mr. Hoover than Quakerism, into which he was born and to which he still yields a nominal adherence. On the other hand we are instructed that Governor Smith's political course has been more consistent with American ideals of public service—so much so that he "in himself may be the acid test of America's democracy." But of this Mr. Villard is not wholly persuaded. His chance to climb so high a peak of fame is still on the knees of the gods.

<sup>1</sup> Published by Alfred A. Knopf, New York, Toronto; Longmans Green & Co. 1928. Price \$3.50.

Charles E. Hughes proves a psychological problem to our author. He discovers that Mr. Hughes has been permitted to encompass two existences—not in the form of a duality manifesting its diverse elements recurrently, as was the case with Stevenson's famous creation, but two consecutive lives wholly unrelated to each other. There was first the roseate Hughes of early dawn who illumined the dark places of Big Business for the behoof of his fellow-countrymen; and then, when he faded and departed hence beyond recall, the second Charles E. Hughes, the statesman, came into being. Sad to say, Mr. Villard seems to think that it was during his period of service in the Supreme Court that Mr. Hughes was spiritually reborn, and that the event must not be regarded as coeval with his entry into "the crookedest Cabinet that has ever disgraced the United States of America." Since then the personal history of the distinguished man does not find Mr. Villard instant in praise. Indeed this particular portion of his book fills the reader with much the same mystification and doubt as to its purpose as a perusal of the *Agricola* of Tacitus. There one is at a loss to know whether he is reading an apologia designed to free the memory of the author's father-in-law from complicity in the corruption of the Roman government of his day, or whether he is to regard it as a piece of political propaganda of immediate service to the friends of Tacitus. And so with Mr. Villard. He can laud Mr. Hughes for his remarkable gifts of mind and his brave use of them in fighting the financial oligarchs of the United States in the earlier days of his career, and he can acknowledge the constant personal probity of the ex-Secretary of State. But all this is so countered by a stressing of the metamorphosis of the young crusader into the man of riper age who lets the sword sleep in his hand the while public wrong-doing is creeping back into its citadel, that one is prone to wonder, in view of the fact that this book was written before the Presidential nominations were made, if the purpose of the author was to discredit the choice of Mr. Hughes as a candidate of the Republican party. We may do Mr. Villard an injustice by this suggestion, and if we err we tender him an apology.

Biographers are men of like passions with ourselves, and for those whom they love they do not hesitate, in moments when the canon of restraint is forgotten, to sound the clarion and fill the life with limitless praise. That proves to be the case in Mr. Villard's sketches of Senator Norris, of Nebraska, and the late Senator La Follette of Wisconsin. Norris is the "quickener of our faith in our

Congress, yes, more than that, in our country and in its institutions . . . The noblest Roman of them all." And La Follette receives this tribute: "Somehow we have no fears for La Follette's posthumous fame. Historians may write what they please; in the hearts of the plain people Robert La Follette is safe, for their love echoes back to his."

With this lyrical note of eulogy in our ears we shall rest our notice of Mr. Villard's book, unreservedly commending it to the attention of our readers.

CHARLES MORSE.

Ottawa.

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#### ADMINISTRATIVE POWERS.

*Administrative Powers over Persons and Property.* By Ernst Freund. Chicago; The University Press. 1928. Pp. xxi., 620.

Students of law are already under great obligations to Professor Freund who in previous studies has established his reputation as a scholarly and interpretative jurist. He has now added to our obligations by this important volume in the series of studies on Administrative Law founded by the Commonwealth Fund in 1920.

Administrative Law and Practice are of growing importance. Already in England jurists have become interested in the field, especially since the ambit of executive power has widened; and within the last year or two they have contributed critical books to developments which are of great moment to lawyers and to citizens alike. In the United States for a considerable time we have watched the growth of these new developments, and we have been helped by studies other than those issued under the auspices of the Commonwealth Fund.

Professor Freund limits his subject to "powers determinative in their nature and exercised with regard to private rights which are in a sense of a normal character." In other words, he does not deal with: (a) social welfare administration; (b) powers exercised by the necessities of government; (c) "enforcement powers"; (d) powers vested in courts of justice; (e) powers covered by the term "administrative law" in Europe under regulative legislation. Professor Freund aims to discuss from the point of view of administrative regulation, powers which operate under statutes, the employment of licences and orders, discretionary and non-discretionary action. In two parts—(a) the system of administrative powers (analytical);

(b) statutory powers operating with the aid of administrative (descriptive)—the author presents in admirable and readable form a highly interesting and learned study which brings federal statutes and those of New York into comparative relationship with the laws of Great Britain and of pre-war Germany. The reader is thus able to follow the actual workings of certain aspects of administrative law in a great modern nation and in one of its most important States, and to see them in the light shed by critical parallels drawn from other countries.

No review could give any adequate idea of the amount of scholarly work and of patient and careful writing which have gone into this volume. We must be content with pointing out that it bears all these marks of learning, juristic insight and comprehensive powers which we have become accustomed to look for in the author's works. We can only hope that such a work as this will be an incentive to some Canadian jurist to write a study of Canadian "administrative" law. There is already in Canada a wide field to be surveyed, and no better model could be taken than Professor Freund's important work, which is not only worthy of an excellent series (which includes Professor Fairlie's study of statutory rules and orders in Great Britain and Mr. G. C. Henderson's book on the Federal Trade Commission), but is also a distinctive addition to its author's international reputation.

W. P. M. KENNEDY.

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#### GROTIUS AND THE JURISPRUDENCE OF HOLLAND.

*The Jurisprudence of Holland.* By Hugo Grotius. The text translated with brief notes and a commentary by R. W. Lee, D.C.L., Rhodes Professor of Roman-Dutch Law at the University of Oxford. Toronto: Oxford University Press. Price, \$9.00.

Dr. Lee by his translation of this important work of the great seventeenth century jurist has increased the obligation under which he has placed students of the civil law by his previous literary labours. In his preface to the work Dr. Lee points out that Grotius wrote his *Inleiding tot de Hollandsche Rechts-geleertheyd* during the period of his imprisonment in the Castle of Loevestein in the years 1619-1621. The book it seems was not intended for publication, but solely for the instruction of the sons of the author in the laws of their country. His intention in this regard having been thwarted by unauthorized copies getting into circulation, Grotius resolved to publish the work himself in the year 1631. In that

year no less than three more unauthorized editions were published. In this way the increase in the purse of the author did not keep pace with the augmentation of his fame. The following observation by Dr. Lee is instructive: "The translator's experience as Professor of Roman-Dutch Law in Oxford during the last five years has taught him that if students are to go to the original sources at all (and without this the study of Roman-Dutch Law has little value) they must go to Grotius sooner than to any other of the old writers. From their teachers or their own reading they will quickly learn to distinguish what is obsolete from what is of living interest." It goes without the saying that this important work of Grotius is one which cannot be neglected by Canadian students of the Civil Law and its development and operation throughout the civilized world.

In *Chapter XXX of Book III* readers will be interested in what Grotius has to say about the "obligation from enrichment" of the Civil Law. His view is that this obligation comes nearest to the law of Nature for "*after the division of property amongst men, [italics ours] equity does not permit that one man should be enriched at another man's expense.*" One is prone to ask why the equity of this matter is superimposed upon something of no real ethical quality? Grotius also puzzles us by his statements that the situation arising where one man has been enriched by another's property is "the first sort of inequality" in the relations between men in society.

CHARLES MORSE.

Ottawa.

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#### PUBLICATIONS RECEIVED.

NOTE.—Mention at this time does not preclude extended notice in later numbers of the CANADIAN BAR REVIEW.

*An Historical Introduction to the Land Law.* By W. S. Holdsworth, K.C., D.C.L., F.B.A. Vinerian Professor of English Law at the University of Oxford. Toronto: Oxford University Press, 1927. Price \$4.50.

In his preface Dr. Holdsworth says that the new English Property Acts in their immediate result have increased the burden of both teachers and students. It is necessary for a considerable time that the teacher shall teach and students learn both the old law and the new. For many years to come the lawyer will be perplexed in advising on titles unless he is familiar with the old body of law as well as with the new statutes. And so the author concludes that the approach to the study of the modern English land law must be an historical one.

*Historical Trials.* By the late Sir John Macdonell, K.C.B. Edited by R. W. Lee, D.C.L. with a Preface by the Right Honourable Lord Shaw of

- Dunfermline, LL.D. Toronto: The Oxford University Press. 1927.  
Price \$3.00.
- Collections of the Nova Scotia Historical Society.* Volume 21. Contains interesting sketches of the lives of the Honourable Thomas Dickson Archibald, of the Queen's Bench, England (1817-1875) and the Honourable Jonathan McCully, of the Supreme Court of Nova Scotia (1809-1877).
- Income Taxes in the British Dominions. A Digest of the Laws imposing Income Taxes and Cognate Taxes in the British Dominions, Colonies, Protectorates, etc.* Second Edition. London: His Majesty's Stationery Office. Price 5s. net.
- The Law of Nations. An Introduction to the International Law of Peace.* By J. L. Brierly. Toronto: Oxford University Press. Price \$1.50.
- Legislative and Other Forms.* Second Edition. By Sir Alison Russell, K.C., of Trinity College, Cambridge. London: Butterworth & Co. Ltd. 1928.
- The Australian Law Journal.* Volume 1. Australia. The Law Book Co. of Australasia Limited.
- An Historical Atlas of Canada.* Edited with introduction, notes and chronological tables by Lawrence J. Burpee. Toronto: Thomas Nelson and Sons, Limited.
- The Cambridge Law Journal.* Volume III. No. 2. Not a notable number. Lawyers who worship at the shrine of the "Great Cham" and would know more about the part that he played in the trials of Baretta and Dr. Dodd will be interested in reading Mr. Theobald Matthew's paper on "Dr. Johnson and the Old Bailey."
- The Solicitors' Journal.* Special number of June 23rd, 1928. Contains, amongst other interesting matter, articles on "The Legal Danger of Lending a Motor Car;" "The Landlord and Tenant Act, 1927;" and "The Doctrine of Cy-pres."